

# International Parental Kidnapping: An Overview of Federal Resources to Assist Your Investigation and Prosecution

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## I. Introduction

Every day, children in the United States are wrongfully removed from the United States or retained outside of the United States in violation of the parental rights of the left-behind parent or other person exercising parental rights. According to the State Department in its 2016 Annual Report on International Parental Child Abduction, more than 600 children were abducted by a parent from the United States to another country.<sup>1</sup> In its 2017 Report to Congress, the State Department reported that in 2016, 230 children abducted from the United States by a parent were returned to the United States, while another 189 child abduction cases were resolved without a successful return of the child.<sup>2</sup>

In 1993, Congress passed the International Parental Kidnapping Crime Act (“IPKCA” or “the Act”), which created a federal international kidnapping offense, codified in 18 U.S.C. § 1204. At that time, the United States was already a party to the Hague Abduction Convention (“Convention” or “Hague Convention”) (discussed in more detail in Part III below). The IPKCA, state criminal parental kidnapping statutes, and the Hague Convention provide separate and parallel mechanisms for the criminal prosecution of offenders and the civil return of children unlawfully removed from the United States. This Article is intended to provide critical information including an overview of these applicable civil and legal remedies related to international parental kidnapping (or “IPK”), an introduction to available federal resources, and an explanation of important roles played by local law enforcement, the FBI, the State Department and the Department of Justice.

## II. The Federal Criminal Statute

International parental kidnapping is criminalized in 18 U.S.C. § 1204, which reads:

- (a) Whoever removes a child from the United States . . . or retains a child (who has been in the United States) outside the United States with intent to obstruct the lawful exercise of parental rights shall be fined under this title or imprisoned not more than 3 years, or both.
- (b) As used in this section—

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<sup>1</sup> Department of State, [Annual Report on International Child Abduction \(2016\)](#) at 5.

<sup>2</sup> Department of State, [Annual Report on International Child Abduction \(2017\)](#) at 6. The State Department classifies cases “resolved” without the successful return of the child when the parents reach a voluntary arrangement for the child to remain outside of the U.S., the left-behind parent withdraws the application for return, the left-behind parent cannot not be located for more than a year, or the child passed away. [Department of State, Annual Report on International Child Abduction \(2017\)](#) at 7.

- (1) the term “child” means a person who has not attained the age of 16 years; and
- (2) the term “parental rights”, with respect to a child, means the right to physical custody of the child–
  - (A) whether joint or sole (and includes visiting rights); and
  - (B) whether arising by operation of law, court order, or legally binding agreement of the parties.
- (c) It shall be an affirmative defense under this section that–
  - (1) the defendant acted within the provisions of a valid court order granting the defendant legal custody or visitation rights and that order was obtained pursuant to the Uniform Child Custody Jurisdiction Act or the Uniform Child Custody Jurisdiction and Enforcement Act and was in effect at the time of the offense;
  - (2) the defendant was fleeing an incidence or pattern of domestic violence; or
  - (3) the defendant had physical custody of the child pursuant to a court order granting legal custody or visitation rights and failed to return the child as a result of circumstances beyond the defendant’s control, and the defendant notified or made reasonable attempts to notify the other parent or lawful custodian of the child of such circumstances within 24 hours after the visitation period had expired and returned the child as soon as possible.
- (d) This section does not detract from The Hague Convention on the Civil Aspects of International Parental Child Abduction, done at the The Hague on October 25, 1980.<sup>3</sup>

Right off the bat, there are a few important things to note. First, unlike many of our other federal child exploitation statutes, § 1204 defines a “child” for purposes of the statute as a person under the age of sixteen.<sup>4</sup> Additionally, application of the statute extends to any “person” who abducts a child in contravention of “parental rights,” and not just parents. Thus, there may be factual situations in which a grandparent, adoptive parent, or other person exercising “parental rights” may be in violation of the statute.

Unlike many State parental kidnapping laws, a court order outlining custodial rights is not required to establish a violation of the Federal IPK statute. Under the statute, “parental rights” include not only those rights outlined by a court order or other legally binding agreement between the parties, but also rights arising out of operation of law.<sup>5</sup> In the absence of any existing court order, “parental rights” are defined by the law of the State in which the child resided before leaving the United States.<sup>6</sup> Under the law of most States, both parents are presumed to have joint physical custody in the absence of any court order or agreement.

Finally, investigators and prosecutors should note that Section 1204 does not include a mechanism to demand the return of the child. In fact, by enacting section (d) of § 1204, Congress specifically signaled its intent that a criminal prosecution under this Section should not interfere with the Hague Convention, a civil mechanism by which a left-behind parent can seek the return of the child. Even in cases in which a defendant is successfully prosecuted and sentenced for international parental kidnapping, there is no certain mechanism by which a U.S. criminal court can order the return of a child located overseas.<sup>7</sup> Because of this limitation in Section 1204, prosecutors and investigators must carefully

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<sup>3</sup> 18 U.S.C. § 1204.

<sup>4</sup> 18 U.S.C. § 1204 (b)(1).

<sup>5</sup> 18 U.S.C. § 1204 (b)(2).

<sup>6</sup> *United States v. Amer*, 110 F.3d 873, 878 (2d Cir. 1997); *United States v. Fazal-Ur-Raheman-Fazal*, 355 F.3d 40, 43 (1st Cir. 2004); *United States v. Alahmad*, 28 F. Supp. 2d 1273, 1274 (D. Colo. 1998).

<sup>7</sup> See Jacqueline D. Golub, *The International Parental Kidnapping Crime Act of 1993: The United States' Attempt to Get Our Children Back-How Is It Working?*, 24 *BROOK. J. INT'L L.* 797 (1999) (discussing *Amer*, 110 F.3d 873, and fact that court had no authority to enforce its condition of probation that defendant return the child to the U.S.).

consider the impact of a criminal prosecution on any efforts to secure the child’s return to the United States, including not just whether, but when, to pursue charges.

### **III. The Hague Abduction Convention and the State Department’s Role in an International Parental Kidnapping Investigation**

#### **A. The Convention**

The Hague Convention on the Civil Aspects of International Child Abduction<sup>8</sup> is a multilateral treaty which provides a civil mechanism by which left-behind parents<sup>9</sup> can pursue the return of their child to the United States. Parents, as civil petitioners, may file a request for the return of a child who “habitually resided” in the United States and was removed to or retained in another Hague Convention partner country in violation of the left-behind parent’s custodial rights.<sup>10</sup> Under the Convention, each partner country has a designated Central Authority to carry out specialized duties under the Convention. The duties of the Central Authority include helping to locate an abducted child; facilitating requests under the Convention for the return of an abducted child, and assisting with planning for the safe return of the abducted child.<sup>11</sup> The International Child Abduction Remedies Act, (“ICARA”) implements the Hague Convention in the United States.<sup>12</sup>

Any country party to the Convention may refuse to return a child to his or her “habitual residence” if the taking parent successfully proves one of the limited defenses listed in the Convention. For example, if a petition for return is filed more than one year after a child is abducted or retained, and the taking parent can prove the child is well-settled in the new environment, a court may refuse to return the child. Additionally, a child may not be returned if there is grave risk that the child would be exposed to physical or psychological harm or otherwise placed in an intolerable situation in his or her country of habitual residence; if the child objects to his or her return and has reached an “age or degree of maturity” at which “it is appropriate to take account of its views”;<sup>13</sup> or if the child’s return would violate the fundamental principles of human rights and freedoms of the country where the child is being held.<sup>14</sup> As of 2016, the Convention is in force between the United States and seventy-five other countries. For a complete list of signatory countries and more information related to The Hague Convention, go to the State Department Website.

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<sup>8</sup> [The Hague Convention on the Civil Aspects of International Child Abduction](#), Oct. 25, 1980, T.I.A.A. No. 11,670, 1343 U.N.T.S. 89, *reprinted in* 51 FR 10494-01 (Mar. 26 1989) Abduction (“Hague Abduction Convention” or “Convention”).

<sup>9</sup> Neither Section 1204 nor the Hague Convention uses the term “left behind parent.” This Article uses the term to reference any person exercising “parental rights” under Section 1204 or “custodial rights” under the Hague Convention.

<sup>10</sup> The Hague Convention uses the term “rights of custody” rather than “parental rights.” These rights refer to “rights relating to the care of the child and, in particular, the right to determine the child’s place of residence.” [Hague Convention supra Article 5.](#)

<sup>11</sup> *See* [Hague Convention supra Article 7.](#)

<sup>12</sup> 42 U.S.C. §§ 11601-11611 (2000), *recodified at* 22 U.S.C.A. §§ 9001-9011 (2014).

<sup>13</sup> [Hague Convention supra Article 13.](#)

<sup>14</sup> *Id.* [supra Article 20.](#)

## **B. Role of the State Department Under the Hague Abduction Convention and Assistance Offered to Left Behind Parents**

The U.S. Department of State's Bureau of Consular Affairs, Office of Children's Issues ("CI") is designated as the U.S. Central Authority under the Hague Convention.<sup>15</sup> CI performs the following functions: promotes and strengthens the Convention in the United States and abroad; manages relationships and communication between left-behind parents, foreign governments, and other stakeholders; provides parents with information and resources available to them in the foreign country; monitors the Hague judicial process and updates parents on this process; works with U.S. embassies and consulates abroad, foreign central authorities, and U.S. law enforcement authorities to locate abducted children; and facilitates requests to DOJ's Office for Victims of Crime (OVC) to disperse travel assistance funds for both the child and left-behind parent when needed.<sup>16</sup>

In addition to providing invaluable services to left-behind parents pursuing a Convention petition, the State Department also serves as the left-behind parent's point of contact in abduction cases in which the offender and child are located in a non-Hague partner country. In this situation, CI can provide the parent with information on the country in which the child is located and discuss possible resources to help assist the parent in efforts to return the child to the United States. CI can also facilitate the parent's communication with other U.S. government agencies and non-governmental organizations that may be able to assist the parent.<sup>17</sup>

When speaking with a left-behind parent about how the State Department can help, investigators and prosecutors should understand that the State Department cannot provide legal guidance to a parent or act as a parent's legal representative; take possession of a child abducted by a parent; place a child into custody at the U.S. embassy; or assist U.S.-based child recovery services in locating and seizing the child. For more information about CI's role and contact information, go to the State Department OCI Website.

## **C. How the State Department Can Assist Law Enforcement**

In addition to helping left-behind parents, CI works regularly with law enforcement to help provide technical assistance and advice in IPK investigations. For example, CI may be able to facilitate the sharing of important passport information on children and abducting parents; coordinate with consular officers overseas to expeditiously issue U.S. travel documents when appropriate; ask the U.S. Embassy or consulate abroad to verify entry of a taking parent or child into a country; ask for a welfare check on a child; and provide country specific information to law enforcement.<sup>18</sup>

Additionally, CI's Prevention Branch administers the Children's Passport Issuance Alert Program ("CPIAP"), an important State Department tool to prevent international parental child abduction. Under U.S. law, any person under the age of sixteen must apply for a passport in person, and the passport applicant must submit documentation that lists the parent or parents or legal guardian(s) of the child applying for a passport. With the help of the CI Prevention Branch, parents may enroll their U.S. citizen children under the age of eighteen in CPIAP. If a passport application is submitted for a child who is

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<sup>15</sup> See 42 U.S.C. §§ 11601-11610.

<sup>16</sup> *Id.* The National Center for Missing and Exploited Children ("NCMEC") and CI have established a cooperative agreement with OVC known as the "Victim Reunification Travel Program" which provides OVC funding to left behind parents covering transportation expenses required to attend foreign court proceedings, translation of documents related to court hearings, and other travel costs associated with the reunification process. Since 1996, NCMEC's Family Advocacy Division manages this program and coordinates with OVC and DOJ's Office of Juvenile Justice and Delinquency Prevention ("OJJDP") to appropriate disbursements under this program. For more information see [NCMEC](#) and [OVC Victim Services](#).

<sup>17</sup> *Id.*

<sup>18</sup> See [State Department: Abduction Prevention Website](#).

enrolled in CPIAP, the CI Prevention Branch works to alert the enrolling parent(s) to verify whether the two-parent consent requirement for passports has been met.<sup>19</sup>

CI's Prevention Branch also assists law enforcement responding to an abduction-in-progress by working with the Department of Homeland Security Customs and Border Patrol ("DHS CBP"). CI's Prevention Branch maintains a 24/7 duty program, as does the State Department's Overseas Citizen Services for the public and law enforcement; provides prevention information to the public; and along with CI's Abduction Branches, conducts training on international parental abduction prevention to both State Department and external audiences. For more information, go to the State Department Abduction Prevention Website.

## IV. The FBI's Role in an IPK Investigation

Under the IPKCA, the FBI is the law enforcement agency tasked with investigating IPK cases. The FBI can take steps to stop abductions in progress and can coordinate the international law enforcement response when abductors have reached their foreign destinations. Both local and federal law enforcement may request information and assistance from foreign law enforcement by working with the FBI's Legal Attaché, otherwise known as the Legat. Legats are stationed at U.S. Embassies and may request assistance from the relevant country's law enforcement to locate and/or confirm the location of either the abductor or child. As discussed below, the FBI also assists prosecutors in obtaining an Unlawful Flight to Avoid Prosecution ("UFAP") warrant under the Fugitive Felon Act.<sup>20</sup>

### A. What is a UFAP Warrant

In addition to the federal IPK offense, almost every State has a statute which criminalizes international parental kidnapping. Depending on the circumstances (including the fact that extradition may be more readily obtained under a state statute, depending on the foreign country involved and the applicable U.S. extradition treaty with that country), law enforcement and prosecutors may wish to pursue local charges rather than prosecute the offender under the federal statute. Either way, extradition is the formal process by which a person found in one country is surrendered to another country for trial or punishment.<sup>21</sup> Law enforcement and prosecutors pursuing local charges may still wish to secure the assistance of federal authorities in locating and apprehending foreign fugitives. In order to obtain this assistance, prosecutors and law enforcement personnel must rely on a UFAP warrant, as authorized by the Fugitive Felon Act, 18 U.S.C. § 1073.<sup>22</sup> The primary purpose of the Fugitive Felon Act is to assist states in apprehending fugitives from state justice.<sup>23</sup>

Congress explicitly stated in the Parental Kidnapping Prevention Act of 1980 ("PKPA") that cases involving fugitives of an international parental kidnapping are appropriately covered by the UFAP process. Pursuant to this process, a local or state prosecutor requests a UFAP warrant from a federal prosecutor or the FBI, after verifying that a state or local felony warrant for the offender already exists and that the state or local prosecutor agrees to extradite the fugitive for prosecution.<sup>24</sup> Once this information is verified, a federal prosecutor files a complaint charging the fugitive with a violation of 18 U.S.C. § 1073 based on probable cause that the fugitive has fled the jurisdiction of the State to avoid prosecution or confinement.

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<sup>19</sup> See [Children's Passport Issuance Alert Page](#).

<sup>20</sup> See [FBI Violent Crimes Against Children Website](#).

<sup>21</sup> See generally, [U.S. ATTORNEY'S MANUAL \(USAM\) 9-15](#); [FED. CRIM. RES. MANUAL 602](#).

<sup>22</sup> See also, [FED. CRIM. RES. MANUAL 1780](#).

<sup>23</sup> *Id.*

<sup>24</sup> [USAM 9-15.1000](#).

Once the local prosecutor obtains a UFAP warrant, the FBI is able to access national and international resources to assist local law enforcement in locating and apprehending the offender. If agents discover that the abductor is abroad, they may request the assistance of foreign law enforcement through the FBI's Legat.

## V. INTERPOL Notices: How They Can Help Your Investigation

Investigators and prosecutors faced with an IPK offender who has left the country should be aware of other tools at their disposal to help locate both offender and victim. International Notices published by INTERPOL and other INTERPOL resources may help this process.

The International Criminal Police Organization ("INTERPOL") is the world's largest international police organization. INTERPOL's aim is to facilitate police cooperation and provide a communication system and various other resources to assist the criminal investigative and humanitarian efforts of law enforcement officials.<sup>25</sup> Participation by countries in INTERPOL is voluntary, and INTERPOL itself has no international jurisdiction or agents. Each INTERPOL member country maintains a National Central Bureau ("NCB") that serves as that country's point of contact for all INTERPOL matters and for communication with NCBs in other INTERPOL member countries. Interpol Washington, the U.S. National Central Bureau (USNCB), a component of the U.S. Department of Justice, is the United States' representative to INTERPOL.<sup>26</sup> When an international parental kidnapping case takes place, law enforcement authorities can contact the USNCB to seek guidance on the use of INTERPOL's resources in pursuing their case.<sup>27</sup>

INTERPOL Notices are international requests for assistance or alerts allowing police in member countries to share crime-related information.<sup>28</sup> For example, an INTERPOL "Red Notice" is an international wanted notice that provides information on the identification of a fugitive who is the subject of an arrest warrant and is wanted for prosecution or to serve a sentence for a serious offense. Red Notices are published by INTERPOL at the request of member countries in order to seek the location of fugitives for the purpose of extradition or other lawful return. Once published, each INTERPOL member country determines what effect to give a Red Notice within its jurisdiction according to its national law and practice. At a minimum, a country receiving a Red Notice issued by another country is expected to enter the Red Notice and information about its subject into its national lookout databases, and to expeditiously contact the requesting country should the fugitive be located in its territory. Approximately one third of INTERPOL's 192 member countries consider a Red Notice to be the equivalent of a provisional arrest request for the purpose of extradition and will detain the subject of a Red Notice depending on circumstances such as the relationship between the countries involved, whether an extradition treaty is applicable, the type of offense involved, and risk of flight. Please note that a Red Notice is a firm commitment by the requesting country to follow up any notification of location or arrest with an extradition request when possible and appropriate. Further, Red Notices relate to the location, arrest and return of fugitives, and are not intended to address the location or return of a kidnapped child.

Alternatives to Red Notices include: Blue Notices, which are published to obtain information concerning the identity, location, or illegal activities of a person of interest in a criminal investigation (including defendants, suspects, witnesses, and victims); and Diffusions, which are formatted messages requesting assistance for purposes similar to the various types of INTERPOL notices, including seeking to locate wanted and missing persons. Diffusions are sent directly by NCBs to one or many countries and the assistance requested can be tailored to the particular circumstances of a case.

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<sup>25</sup> See [Interpol Website](#).

<sup>26</sup> See 22 U.S.C § 263a, and 28 C.F.R. § 0.34.

<sup>27</sup> See [Interpol-Washington](#).

<sup>28</sup> See [Interpol Website Notices](#).

Finally, INTERPOL Yellow Notices are published in order to locate a missing person (adult or minor, including kidnapping victims) or to identify a person who is unable to identify him or herself. Yellow Notices are often issued in IPK cases in addition to Red Notices on the parental abductors.

## VI. How OIA and CEOS Can Help

DOJ's Office of International Affairs (OIA) provides information and advice to federal and state prosecutors about the procedure for requesting extradition from abroad, and advises and provides support to federal prosecutors handling foreign extradition requests for fugitives found in the United States.<sup>29</sup> OIA also initiates all requests for provisional arrests of fugitives pursuant to extradition treaties.<sup>30</sup> Because every extradition treaty is negotiated separately, prosecutors considering an IPK charge against an offender who is not located in the United States should contact OIA at the onset of any investigation to discuss extradition or other means to return an offender to the United States. More information about OIA can be found at the OIA website.

Finally, Trial Attorney's with DOJ's Child Exploitation and Obscenity Section ("CEOS") work in partnership with the ninety-four U.S. Attorney's Offices to investigate and prosecute defendants who have violated federal child sexual exploitation laws, including violations of the federal IPK statute. CEOS also provides advice and litigation support to other federal prosecutors regarding prosecutions under Section 1204, and conducts training for prosecutors, law enforcement personnel, and others on IPK matters. Information about how CEOS can assist you in your IPK investigation or prosecution can be found at the CEOS Website.

## VII. Conclusion

When investigators and prosecutors are faced with a potential IPK case, it is important to consider all of the available federal resources discussed above to aid in the investigation. Prosecutors must also consider the unique challenges and considerations in an IPK case before initiating a prosecution. Investigators and prosecutors should contact the FBI, the State Department, and DOJ's OIA and CEOS to discuss any issues raised in this Article and to seek assistance.

### ABOUT THE AUTHOR

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<sup>29</sup> See [USAM 9-15.210](#).

<sup>30</sup> *Id.* at 9-15.230.